



IMCO

INTERNATIONAL CONFERENCE ON TONNAGE MEASUREMENT OF SHIPS, 1969

General Committee

SUMMARY RECORD OF THE EIGHTH MEETING

held at Church House, Westminster, London, S.W.1,
on Wednesday, 11 June 1969 at 9.45 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/4;
TM/CONF/6; TM/CONF/C.1/WP.8) (continued)

Article 3 - Application (continued)

Paragraphs (3) and (4) (continued)

The CHAIRMAN drew attention to the Norwegian proposal (TM/CONF/C.1/WP.8) which contained an amendment to paragraph (3) as well as a proposal for an additional paragraph (5).

The Committee might first take up the French amendment (TM/CONF/6; page 10) to paragraph (3)(a).

Mr. DARAM (France) said that the purpose of the amendment was explained in the right-hand column. His Government was anxious that the new Convention should not be retrograde. If the amendment were not incorporated in the text, a "new ship" under the definition in Article 2 which an owner wished to sell, say at the end of five years, to another country, would be treated as "existing" if the second country had not yet ratified the Convention at the time when the building contract for the ship in question had been signed.

Mr. WIE (Norway) said that having heard the foregoing explanation he could support the amendment.

Mr. HINZ (Federal Republic of Germany) said that the French amendment was essential in view of the definition of a "new ship" now agreed in Article 2, paragraph (4).

Mr. KENNEDY (Canada) agreed with the previous speaker.

Mr. PROSSER (UK) said that having reconsidered the French amendment, the fears he had expressed at the previous meeting about its implications, were evidently unfounded. If the Committee maintained its decision to insert the words "for each

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Contracting Government" in Article 2, paragraph (4), the French amendment to Article 3, paragraph (3)(a) was acceptable, provided that the word "Contracting" were substituted for the word "Signatory".

Mr. GERDES (Netherlands) said that as his delegation had indicated at the previous meeting, it did not favour the French amendment because of the problems that would arise in respect of countries which ratified the Convention after it had entered into force. The amendment might place such countries in an advantageous position. There should be a single standard for defining "new" ships up to the time of entry into force of the Convention.

The CHAIRMAN put to the vote the French amendment to paragraph (3)(a) with the substitution of the word "Contracting" for the word "Signatory".

The amendment was approved by 19 votes to none.

Mr. PROSSER (UK) said that the wording just agreed for paragraphs (3)(a) was not quite specific enough and might cause practical difficulties. The French amendment (TM/CONF/6; page 10) to paragraph (3)(c), was not entirely satisfactory, and he proposed a simpler alternative which might read: "existing ships which undergo alterations or modifications that cause at least a 10 per cent variation in their gross tonnage".

The representatives of the Federal Republic of Germany, France, Norway and India supported the United Kingdom amendment.

Mr. GERDES (Netherlands) drew attention to his Government's comment on the point; it preferred the wording of analogous provisions in other international conventions. There was no need to require re-measurement after only slight modifications. In any event, it would be difficult to establish only slight changes by means of inspection, and major structural alterations requiring

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re-measurement would always have to be subjected to inspection. Therefore, the words "which affect their gross tonnage" were not only superfluous but also imprecise, because it was not clear whether they referred to the old or the new system.

Mr. MURPHY (USA) said that his delegation had no strong views but believed practical difficulties might arise in a clause as specific as that suggested by the United Kingdom representative. Did the 10 per cent refer to gross tonnage under the old or under the new system? A more general provision would be preferable so as to leave latitude to Administrations. The re-measurement might have to be calculated under the new system and would in any case need to be carried out by them.

Mr. KASBEKAR (India) agreed with the previous speaker, and considered it preferable, instead of referring to an actual percentage, to stipulate that if the alterations were of a "major character" the Regulations in Annex I would apply.

Mr. BACHE (Denmark) agreed with the Netherlands representative.

Mr. GLUKHOV (USSR) said that paragraph (3)(c) should be very general: the Norwegian wording (TM/CONF/C.1/WP.8) for paragraph (3)(b) would be acceptable.

Mr. DARAM (France) warned the Committee against leaving the wording too vague lest that give rise to argument as to whether alterations or modifications were of a major character or not.

Mr. NICHOLSON (Australia) favoured the United Kingdom amendment. The words "a major character" defined nothing. A 10 per cent increase could not refer to new tonnages and must in the context mean a 10 per cent increase in existing gross tonnages.

Mr. WIE (Norway) said that the views of administrations might differ; hence the United Kingdom amendment would be improved by the insertion of the word "existing" before the words "gross tonnage".

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Mr. BORG (Sweden) agreed.

Mr. PROSSER (UK) accepted the Norwegian representative's suggestion which might render the wording more precise. Practical difficulties were inescapable whatever way the clause was drafted, but they were likely to be greater if it were too general.

Mr. MURPHY (USA) said that the problem might have to be re-examined in the light of the decisions taken on Article 17 (Coming into Force).

The United Kingdom amendment, as amended, was approved by 23 votes to none.

The CHAIRMAN opened the discussion on the wording proposed by Norway (TM/CONF/C.1/WP.8) for paragraph (3)(c) which read "existing ships if the owner so requests".

Mr. HINZ (Federal Republic of Germany) and Mr. MILEWSKI (Poland) supported the proposal.

The proposal was approved by 24 votes to none.

The CHAIRMAN invited the Committee to comment on paragraph (4).

Mr. GERDES (Netherlands) favoured the original text (TM/CONF/6; page 9), but a reference to the new paragraph (3)(c) would now need to be inserted in the opening proviso.

Mr. KASBEKAR (India) agreed with the previous speaker.

Mr. HINZ (Federal Republic of Germany), drawing attention to his Government's amendment (TM/CONF/6; page 9), said that its purpose was explained in the right-hand column. The suggested figure of 25 years had been put in square brackets and could be discussed, but it would be unwise not to determine a period at all, thus allowing existing ships to retain their present tonnages for their whole life-span.

Mr. DARAM (France) supported the amendment but pointed out that the length of the period could not be decided yet. The French Government had proposed deleting paragraph (4) altogether because it seemed superfluous since the conditions under which the Regulations would not apply were indicated in paragraph (3)(b).

Mr. WIE (Norway) said that his delegation could accept paragraph (4) as it stood. He could not comment on the proposal by the Federal Republic of Germany and more particularly on the period of time before the outcome of the discussions in the Technical Committee were known.

Mr. BACHE (Denmark) favoured the idea of a time-limit.

Mr. GERDES (Netherlands) said that if the Conference reached agreement on new parameters of measurement as close as possible to existing ones, there would be no need for specifying a time-limit. If the average life of a ship was about 20 years, why stipulate that after that period it would need to be re-measured?

Mr. PROSSER (UK) said that his delegation attached considerable importance to the question of how existing ships were to be treated in the Convention, and considered that the new requirements should not apply to them for a considerable period.

The number of years to be inserted in paragraph (4) could not yet be decided but some fairly long period, say 15 years, bearing in mind the provisions concerning entry into force would make the Convention easier to enforce.

Mr. SUZUKI (Japan) and Mr. BORG (Sweden) agreed with the Norwegian representative.

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Mr. GLUKHOV (USSR) said that the discussion was somewhat academic in the absence of the Technical Committee's Report. Once that became available, the General Committee could return to the question of a time-limit which might prove to be a minor one. Clearly, the General Committee would have to review some of its decisions as to application in the light of the parameters finally chosen, particularly if they resulted in tonnages close to those of existing systems.

Mr. MURPHY (USA) said that the final answer to the problem of how existing ships should be treated depended to some extent on the decisions to be taken by the Technical Committee. The General Committee had just approved a provision whereby an owner could request that the Regulations contained in Annex I be applied to an existing ship. Port authorities might suspect a lack of fair play if owners availed themselves of that provision in every case in which they stood to benefit by doing so. However, should such suspicion arise, they would feel less concern on the point if owners were only permitted to exercise the option for a short period. The Committee should therefore make the transitional period for existing ships as brief as possible.

Mr. KASBEKAR (India) said that from the legal point of view, no convention should be retroactive. The position of existing ships should be protected and there should be no limit to the period for which the option provided by the new sub-paragraph (c) was available.

The CHAIRMAN, speaking as the representative of Belgium, said that if existing ships were allowed to retain their old tonnages for a very long time, owners might be tempted to keep them in service longer than was desirable for ships of their age.

Mr. GERDES (Netherlands) noted that support had been expressed for the idea that there should be no limitation of the period for which existing ships could retain their old tonnages. However, the new measurement system elaborated by the Conference might result in tonnages which differed substantially from the present ones, in which case port authorities would be very concerned about what treatment had been laid down for existing ships. If, on the other hand, the new system gave figures very close to the existing ones, they would have less reason for concern.

Mr. NICHOLSON (Australia) agreed that it would help port authorities if a limit was set on the transitional period for existing ships, because even if the new tonnages were exactly the same as the old, port authorities would still prefer to work on the basis of an international tonnage certificate rather than a national one. He therefore supported the principle expressed in paragraph (3)(b) of the French proposal.

Mr. DARAM (France) said that the French Ministry of Economy and Finance was responsible for collecting port dues on behalf of French port authorities. The existence of separate tonnage measurement systems for old and new ships would oblige the Ministry to establish two different rates of tax in order to ensure that both old and new ships bore an equal burden. That would considerably complicate its daily task. His delegation was therefore in favour of the shortest possible period of exemption for existing ships.

The CHAIRMAN noted that there had been considerable support for the idea that the Committee should take a decision on the principle of including in the Convention a provision stipulating a period of time after which it would apply to existing ships. He therefore invited the Committee to vote on that principle.

The principle was approved by 24 votes to 4.

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The CHAIRMAN said that two courses were open to the Committee for giving effect to the principle it had just endorsed. One was to approve the proposal of the Federal Republic of Germany (TM/CONF/6), in which case an amendment to paragraph (4) was involved; the other was to follow the French proposal (TM/CONF/6), in which case paragraph (4) would be deleted and paragraph (3) would be amended to include the wording suggested in sub-paragraph (b) of the French proposal.

Mr. HINZ (Federal Republic of Germany), noting that there was no difference in substance between the two proposals, said that his delegation was prepared to withdraw its proposal in favour of the French proposal.

The CHAIRMAN said that it was clearly the general wish to defer a decision on the length of the exemption period for existing ships. That being so, the Committee would probably wish to consider sub-paragraph (b) of the French proposal assuming that the words "fifteen years" were replaced by square brackets.

It was so decided.

The CHAIRMAN invited the Committee to vote on the proposal to include in paragraph (3) the words "existing ships, [] after the date on which the Convention comes into force".

The proposal was adopted by 28 votes to none.

Mr. PROSSER (UK) said that he wished to revert to the question of existing vessels changing flag. He proposed that Article 3(3), or possibly 3(4), should include a provision to the effect that the Regulations contained in Annex I would apply to existing vessels on transfer to the flag of a Contracting Government. He was aware that such a provision might affect the secondhand

ship market. Nevertheless, it was a legal requirement in the United Kingdom that any ship coming on to the British Register should be re-measured. His Government would continue to re-measure such vessels whether or not the prospective Convention included a provision along the lines he had suggested; but in the absence of such a provision it might be difficult to decide whether a vessel should be re-measured under the new system or the old.

Mr. HINZ (Federal Republic of Germany) said that he saw no reason for distinguishing between existing ships which remained under the same flag and existing ships which changed flag. Owners might suffer commercially if an existing ship were re-measured under the new system.

Mr. WIE (Norway) agreed with the representative of the Federal Republic of Germany and said that he opposed the United Kingdom proposal.

Mr. BACHE (Denmark) drew the Committee's attention to the new paragraph (3) it had included in Article 9. Under that paragraph, the International Tonnage Certificate (1969) could remain in force for a period not exceeding three months. The question whether re-measurement was necessary would then be a domestic matter for the Contracting Government concerned.

Mr. GERDES (Netherlands) said that he too opposed the United Kingdom proposal. He thought the point was covered by the wording which the Committee had approved for Article 3(3)(a).

Mr. KASBEKAR (India) agreed that no new provision was necessary. The suggested provision would in any case be incompatible with the establishment of a transitional period for existing ships.

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Mr. MURPHY (USA) said that he had doubts about the inclusion of a provision dealing with the position of existing ships which changed flag. In any case, the question was linked with the length of time for which existing ships should be allowed to retain their old tonnages, a point on which the Committee had deferred a decision.

Mr. PROSSER (UK) said that he did not think the point could be solved by reference to either Article 9(3) or Article 3(3)(a). He wished to make it clear that his proposal concerned the transfer of an existing ship from any flag to the flag of a Contracting Government.

Mr. KENNEDY (Canada) said that under Article 3(3)(a), as approved by the Committee, the Regulations contained in Annex I were to apply to "new ships", including those which come under the flag of a Contracting Government by change of nationality". He thought that the new measurement system could equally well be applied to an existing ship transferred from the flag of a non-Contracting Government to that of a Contracting Government. He was therefore inclined to support the United Kingdom proposal.

Mr. HINZ (Federal Republic of Germany) said that he did not think that existing ships should have to be re-measured under the new system on change of flag, irrespective of whether they were transferred from the flag of a Contracting Government or that of a non-Contracting Government. However, the problem could not be settled until the length of the exemption period had been decided.

Mr. NICHOLSON (Australia) agreed. He said that the clause proposed by the United Kingdom would be unnecessary if a short exemption period was decided on, although the position would be different otherwise.

Mr. MURPHY (USA) supported the Australian view.

Mr. PROSSER (UK) said that it was unlikely that the transitional period decided on by the Committee would be sufficiently short to dispose of the problem.

It was decided to defer discussion of the United Kingdom proposal.

The CHAIRMAN drew the Committee's attention to the proposal by Norway to add a new paragraph (5) to Article 3 (TM/CONF/C.1/WP.8, paragraph 2).

Mr. WIE (Norway) said that the aim of his delegation's proposal was to prevent shipowners reverting to the old rules to re-measure existing ships which had already been measured by the new rules. Although such a provision might seem unnecessary he thought it wise to make the Convention completely clear on that point.

Mr. PROSSER (UK) supported the Norwegian proposal. He suggested that in line 3 of paragraph 2 the words "shall not subsequently" should be substituted for "may not at a later stage".

Mr. KASBEKAR (India) also supported the proposal.

Mr. DARAM (France) thought that the additional paragraph was unnecessary since the point it made was already covered by paragraph (3)(c) adopted earlier.

Mr. HINZ (Federal Republic of Germany) shared that view. There could be no return to the old regulations for an owner who had opted to have an existing ship measured by the new.

Mr. QUARTEY (Ghana) also thought the proposed paragraph would be superfluous, particularly if it was decided to make the new Regulations applicable to existing ships after a relatively short period of time, such as five years.

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Mr. KENNEDY (Canada) drew attention to the difficulty that would arise if an existing ship that had already been measured according to the new rules, at the owner's request, by the authorities of a Contracting Government, was transferred to the flag of a non-contracting Government and re-measured according to the old rules, and finally re-transferred to the flag of another Contracting Government. In his view such a ship would be considered as an existing ship rather than as a new ship, and the owner would again have a choice between the old and new regulations. There was some merit in a proposal designed to prevent that possibility.

Mr. DARAM (France) disagreed: he thought such a ship should be considered as a new ship, as defined under Article 2.

Mr. QUARTEY (Ghana) thought the fundamental question was which of the owners was to be considered the new owner, and, as such, entitled to ask for re-measurement.

Mr. NICHOLSON (Australia) supported the Norwegian proposal.

The CHAIRMAN invited the Committee to vote on the Norwegian proposal.

The proposal was adopted by 16 votes to 7.

Article 17 - Coming into Force (continued)

The CHAIRMAN pointed out that there were two proposals relating to Article 17 before the Committee, that of Basic Proposal A (TM/CONF/4) and that of Basic Proposal C (TM/CONF/6). The main difference between the two was that the former provided for entry into force of the Convention after signature by a certain number of Governments of States with at least one million tons of merchant shipping, and the latter for entry into

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force after signature by Governments to States whose combined fleets constituted a certain percentage of the world's merchant shipping.

Mr. WIE (Norway) withdrew his delegation's proposal in favour of the original draft text set out on pages 40-42 of TM/CONF/6. After studying the problem his delegation had decided that percentage of gross tonnage was the better parameter.

Mr. PROSSER (UK) said his delegation had originally suggested that entry into force be contingent upon acceptance by two thirds of the Governments concerned, including those with two-thirds of the tonnage of world shipping, but now felt that that might cause difficulties. He favoured the French version of paragraph (1) set out on pages 40 - 41 of TM/CONF/6, with the following amendments: in line 2, "two years" to be substituted for "six months"; in line 4, "twenty-five" to be substituted for "fifteen"; and in line 5 "fifteen" to be substituted for "ten".

Mr. DARAM (France) said his delegation could agree to modify the figures mentioned if that were the wish of the majority.

Mr. MURPHY (USA) made a plea for time to study the implications of the United Kingdom suggestion. His delegation was generally in favour of entry into force after acceptance by a substantial number of States representing a substantial percentage of the world's tonnage; but any specific decision on the question should be deferred until a later meeting.

Mr. GERDES (Netherlands) pointed out that his delegation's proposed text (pages 41 - 42 of TM/CONF/6) had the advantage of being in line with that of the corresponding provision in the Safety and Load Line Conventions. It also met the need to have the largest possible percentage of the world's fleet covered by the Convention. He could agree to two of the figures suggested

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in the French proposal, namely "... fifteen governments of States including ten each with not less than ..." etc., but wished the period for entry into force to remain as twelve months after signature.

Mr. ITO (Japan) agreed that it was desirable for the Convention to come into force after as short a time as possible, though owners would need a certain period of adjustment. He felt strongly that the Convention should be acceptable to as many States as possible, including a high proportion of States with large fleets. His delegation could support the United Kingdom proposal in principle, but shared the United States view that more time was needed for study of its implications.

Mr. DARAM (France) explained that the figure of fifteen governments (in line 4 of his delegation's proposal) was intended to represent approximately half the average number of those who, by voting in the plenary, had indicated an active interest in the subjects under discussion. Similarly, the figure of ten (line 5 of his delegation's proposal) represented approximately half the number of countries with a fleet of one million gross tons.

Mr. PROSSER (UK) said that his delegation had proposed a period of two years for entry into force after signature because it felt that a shorter period would cause administrative difficulties. He entirely shared the Norwegian view that entry into force should be contingent on **acceptance** by two-thirds of the governments concerned, those governments between them having two-thirds of the world's tonnage; the figures he had proposed corresponded to that proportion.

Mr. KASBEKAR (India) preferred the French proposal, because it provided for wider application of the Convention than the proposal based on acceptance by governments representing 80 per cent of the world's merchant fleet.

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Mr. GLUKHOV (USSR) pointed out that the present Convention was substantially different from those previously concluded under IMCO's auspices because its entry into force related to several concepts: a time-limit, a certain number of States, and a certain percentage of the world's fleets. A decision on the first concept was entirely dependent on whether the Technical Committee chose a system of measurement as close as possible to the existing system or a new system. As for the other two concepts, his delegation was convinced that the Convention should have the widest possible application, and therefore favoured acceptance by States with a two-thirds proportion of gross tonnage of world shipping as a basic criterion.

Mr. HINZ (Federal Republic of Germany) favoured a time limit of three years, which would give Administrations more time to get accustomed to applying the new system. He thought the United Kingdom figure of fifteen States with not less than one million gross tons of shipping represented far too small a proportion of the world's fleet, and preferred twenty-five. He supported the Soviet view that the basic criterion should be acceptance by countries with a 60-80 per cent share in the world's merchant fleet.

Mr. MUHEIM (Switzerland) supported the Netherlands proposal on pages 41-42 of TM/CONF/6, which had the advantages of following the solution adopted in other Conventions of which IMCO was depositary, and of avoiding too long a waiting period before entry into force.

Baron de GERLACHE de GOMERY (Belgium) favoured a time-limit of one year or even two years, and a figure of fifteen governments as in the original French proposal, though he could accept the United Kingdom suggestion to raise that figure to twenty-five.

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Mr. WIE (Norway) shared the views expressed by the representatives of the Soviet Union and the Federal Republic of Germany. It was vital that the Convention should be accepted by a large majority of States with substantial merchant fleets if it were not to share the fate of the Oslo Convention.

Mr. BORG (Sweden) also endorsed those views but maintained his preference for a two-year time-limit.

Mr. PROSSER (UK) said he was willing for the figures in his proposal to be expressed in terms of percentage if that were the wish of the Committee; he did not agree, however, that 15 governments, each with not less than one million gross tons of shipping, represented too small a proportion of the world's fleets. He asked if the Secretariat could give guidance as to its past experience in the matter.

Mr. NADEINSKI (Executive Secretary) warned that the Committee was already behind in its work; it should finalize consideration of the Articles that day if the Drafting Committee were to be able to start work on them the following day with a view to preparing the Convention for acceptance by 20 June. The Committee needed only to agree in principle, and not in detail on the actual figures involved.

As far as the Secretariat was concerned, there would be no difficulty if the Convention referred either to a number of States or to a percentage of world gross tonnage, but to refer to a percentage of States might cause problems. The Regulations for Preventing Collisions at Sea had used a "substantial majority" of States as a criterion; the Maritime Safety Committee had interpreted that as implying 60-70 per cent of world gross tonnage.

The meeting rose at 12.40 p.m.