

The New Convention on Facilitation of International Maritime Traffic

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Entitled *Merchant Shipping on a Sea of Red Tape*, a brochure circulated at the Washington Conference of the International Chamber of Commerce in 1959 suggested, to expedite the flow of sea trade, that the Intergovernmental Maritime Consultative Organization (IMCO) adopt facilitation procedures comparable to those accorded to the International Civil Aviation Organization (ICAO).

The Practice of ICAO. The Chicago Convention of 1944¹ has accorded ICAO certain regulatory powers² whose objectives are securing world-wide uniformity of aviation law and the facilitation of international air traffic. Article 37 of the Chicago Convention provides *inter alia* that ICAO "shall adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures dealing with . . . customs and immigration procedures . . . and such other matters concerned with the safety, regularity and efficiency of air navigation as may from time to time appear appropriate". The policy with respect to the implementation by States of the Standards and Recommended Practices on Facilitation is strengthened by Article 22 of the Chicago Convention, which expresses the obligation accepted by each contracting State "to adopt all practicable measures, through the issuance of special regulations or otherwise, to facilitate and expedite navigation by aircraft between territories of contracting States, and to prevent unnecessary delays to aircraft, crews, passengers, and cargo, especially in the administration of the laws relating to immigration, quarantine, customs and clearance". Furthermore, under the terms of Article 23 of the Chicago Convention each contracting State "undertakes, so far as it may find practicable, to establish customs and immigration procedures affecting international air navigation in accordance with the practices which may be established or recommended from time to time, pursuant to this Convention".

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¹ Convention on International Civil Aviation, ICAO Doc. 7300.

² The author's note, "Regularly Procedures of ICAO as a model for IMCO", (1964) 10 McGill L.J. 262.

The elaboration and periodical revision of the Facilitation Regulations which are laid down in Annex 9 to the Chicago Convention,³ led to the elimination of many expensive, troublesome, and time-consuming formalities involved in crossing national boundaries. The waiting time of international air passengers and air cargo was cut down, and much of the paper work that delays travellers and causes airlines to retain large clerical staffs, was eliminated. It has been estimated that, as a result of ICAO's efforts in the field of facilitation, within a period of five years, passenger delay between landing at and leaving the airport had on average, been reduced by one-third. Correspondingly, the time on the ground at intermediate stops on international air routes had been reduced by as much as one-half in some cases.⁴

The Practice of IMCO. In contrast to ICAO, IMCO has no comparable regulatory powers.⁵ This could be attributed to the reluctance on the part of IMCO's considerable number of Eastern-block members to allow limitations on their sovereignty and thus opposition to any sort of legislative competence of IMCO. Furthermore, the technical annexes to existing maritime conventions — the Convention on Safety of Life at Sea of 1948,⁶ and the Convention for the Prevention of Pollution of the Sea by Oil of 1954⁷ — do not require an especially flexible amending procedure, because these annexes contain material of a relatively static nature which does not require continual revision. The maritime regulations are amended quite efficiently by the traditional procedure as applied to the revision of international treaties in that full-scale conferences are convened.⁸

The Origin of the New Convention. Taking a long-overdue initiative in pointing out the difficulties in sea trade and the necessity of efficient facilitation in this field, the users of international maritime transport who are members of the International Chamber of Commerce published the brochure mentioned above containing the proposal that IMCO do its utmost to that end. For best achieving

³ International Standards and Recommended Practices, Facilitation Annex 9 to the Convention on International Civil Aviation, (4th edition, Nov. 1960).

⁴ *Memorandum on ICAO*, (4th edition 1963) p. 23-25.

⁵ Convention on the Inter-governmental Maritime Consultative Organization, Geneva 1948; see Peaslee, 1 *International Governmental Organizations* (2nd edition, 1961) p. 904.

⁶ 3 United States Treaties and Other International Agreements (1955), 3451.

⁷ Final Act of Conference and Text of the International Convention for the Prevention of Pollution of the Sea by Oil (Cmd. 9197, 1954).

⁸ The Assembly of IMCO amended in 1960 the standards of the Convention on Safety of Life at Sea, and in 1962 the annex to the Prevention of Pollution of the Sea by Oil Convention.

this objective, it appeared advisable not only to adopt a new convention similar to the existing maritime conventions, but also to provide for a more flexible procedure for amending the technical annex of the proposed new convention.

The Member States of IMCO responded favourably to this suggestion, establishing a Group of Experts for the purpose of drawing up a convention on the facilitation of maritime traffic. After this group had completed its task, a Conference on Facilitation of Maritime Travel and Transport was held in London from March 24th to April 9th, 1965, fifty-seven states being represented. The delegates used as a basis for discussion the draft convention and its annex prepared by the Group of Experts.⁹ They accepted to a large extent the suggestions of the experts both as to structure and wording of the Convention.

The Characteristics of the New Convention. The Convention on Facilitation of International Maritime Traffic¹⁰ consists of a few basic articles dealing with the objectives of the Convention, the duties of the contracting parties, and the amending procedure for the International standards and recommended practices which are laid down in a comparatively extensive Annex. This Annex to the Convention deals with (a) documents required on arrival and departure of persons or cargo, (b) measures to facilitate clearances of cargo, passengers, crew, and baggage, (c) public health and quarantine including sanitary measures for animals and plants, and (d) services at ports.

Under the Convention, the contracting parties undertake to adopt, in accordance with the provisions of the Convention and its Annex, all appropriate measures to facilitate and expedite international sea trade and to prevent unnecessary delays to ships and to persons and property on board (Art. 1). They furthermore undertake to cooperate in securing the highest practicable degree of uniformity in formalities, documentary requirements and procedures in all matters in which such uniformity will facilitate and improve international maritime traffic. Any alterations in formalities, documentary requirements and procedures to meet special requirements of a domestic nature will be kept to a minimum. (Art. 3).

⁹ For the text of this final draft, see IMCO Doc. FAL/CONF/1.

¹⁰ Final Act of the International Conference on Facilitation of Maritime Travel and Transport, 1965 (as published by IMCO). On November 25, 1965, the Convention had been signed without reservation as to acceptance by Monaco (April 9, 1965) and Ghana (November 5, 1965). The Convention will enter into force upon acceptance by at least ten states (Art. XI).

The contracting parties, however, retain their full discretionary power in implementing the international regulations as contained in the Annex. They may apply temporary measures "to preserve public morality, order and security" or to prevent the introduction or spread of diseases or pests affecting public health, animals or plants (Art. 5, para. 2). Moreover, all matters not expressly dealt with in the Convention remain subject to the legislation of the contracting governments (Art. 5, para. 3).

Notification of compliance or non-compliance. The London Conference did not follow the proposal of the Expert Group in all instances. There are two noteworthy departures from the draft prepared by the latter.

The first change concerns the legal status of the international regulations, which are recommendations rather than binding rules.¹¹ While the draft convention envisaged the notification of differences which may exist between the domestic regulations and the Annex material — both standards and recommended practices — the Convention imposes the obligations to notify IMCO of *non-compliance* with *standards* and of *compliance* with *recommended practices*:

Any Contracting Government that finds it impracticable to comply with any Standard by bringing its own formalities, documentary requirements or procedures into full accord with it or which deems it necessary for special reasons to adopt formalities, documentary requirements or procedures differing from that Standard, shall so inform the Secretary-General and notify him of the differences between its own practice and such Standard...

Contracting Governments are urged to bring their formalities, documentary requirements and procedures into accord with the *Recommended Practices* insofar as practicable. As soon as any Contracting Government brings its own formalities, documentary requirements and procedures into accord with any Recommended Practice, it shall notify the Secretary-General thereof...¹²

In consequence of these provisions, the contracting parties may at their discretion *contract* out of the international standards, and may *contract in* the international recommended practices. If IMCO does not receive any notification, the implementation of the standards and the rejection of the recommended practices can be assumed.

This different treatment of standards and recommended practices emphasizes the distinct legal status of the Annex material, while the implementation of the standards is considered to be necessary, that of the recommended practices is merely deemed desirable for achieving the facilitation of sea trade:

¹¹ A proposal contained in the preliminary draft, to the effect that the contracting parties shall undertake not to establish any regulations less favourable than the standards, had been omitted already by the Expert Group in their final draft.

¹² Art. 8 of the Convention (emphasis mine).

"Standards" are those measures the uniform application of which by Contracting Governments in accordance with the Convention *is necessary and practicable* in order to facilitate international maritime traffic;

"Recommended Practices" are those measures the application of which by Contracting Governments is *desirable* in order to facilitate international maritime traffic.¹³

Procedures for the Amendment of the Annex. The second departure from the draft convention concerns the provisions for amendment of international regulations as laid down in the Annex to the Convention. The draft of the Expert Group suggested a procedure similar to that of ICAO: preparation of the amendments by a technical committee of IMCO, and their adoption by the Council and the Assembly of IMCO. The delegates to the Conference, however, refused to establish a permanent technical committee within IMCO.¹⁴ They abandoned the concept of attributing to IMCO important regulatory powers. Instead of the Organization, the contracting parties themselves prepare and adopt the amendments for the purpose of general acceptance. This may be done either by communicating with the Organization or by convening a conference:

The Annex to the present Convention may be amended by the Contracting Governments, either at the proposal of one of them or by a conference convened for that purpose.¹⁵

(i) *The Communicating Procedure.* According to Art. 7 para. 2 of the Convention, the contracting parties may propose amendments to the international regulations by forwarding the draft amendments to the Secretary-General of IMCO. Upon express request, the Secretary-General communicates any such proposal directly to all contracting parties for their consideration and acceptance. Only in the case that the proposal is not accompanied by such an express request may the Secretary-General proceed to such consultations as he deems advisable before communicating the proposal to all the contracting parties.

(ii) *The Conference Procedure.* According to Art. 7 para. 3 of the Convention, a conference for the consideration of proposed amendments shall be convened upon the request of at least one-third of the contracting parties. The amendments shall then be adopted by a two-thirds majority of the Governments present and voting.

¹³ Art. 6 of the Convention (emphasis mine).

¹⁴ However, according to Resolution 4 of the Final Act of the London Conference, IMCO is requested "to consider the possibility of establishing from time to time an *ad hoc* working Group with consultative and advisory functions composed of experts... to assist the Secretary-General in carrying out the task devolving on him under the Convention".

¹⁵ Art. 7, para. 1 of the Convention.

The amendments to the Annex are at no time and in no instance subject to any decision of the Council or Assembly of IMCO. Under the communicating procedure, they enter into force six months after the date on which they have been accepted by the majority of the contracting parties. Under the conference procedure, they enter into force automatically six months after the date on which the Secretary-General notifies the contracting parties of the amendments adopted by the conference (Art. 7 para. 4).

Concluding remarks. This concept — the abandonment of any permanent technical committee for the preparation of regulatory material, and the exclusion of any organ of IMCO from the *adoption* of this material — demonstrates the reluctance of the Contracting States to confer regulatory powers on IMCO. This lack of regulatory power makes IMCO quite distinct from other specialized agencies which possess remarkable competence in the field of international legislation.¹⁶

The future will show how successfully the new technique of *co-ordinated governmental action* will operate instead of *inter-governmental action*, in the formulation of international regulations.¹⁷ There are, in this writer's opinion, some doubts as to the practicability and efficiency of the new amending techniques, the communicating procedure and the conference procedure. It seems, for instance, quite obvious that the proper functioning of the communicating procedure for the amendment of the Annex will depend upon the self-restraint of the contracting parties in submitting proposals to the Secretary-General of IMCO. Furthermore, it would seem desirable that instead of circulating all proposals to the contracting parties, the Secretariat of IMCO should be in a position to eliminate proposals which do not appear to be sufficiently mature for general acceptance, or of which the wording needs improvement.

¹⁶ See the writer's note on "International Legislation" in (1964) 2 *Canadian Yearbook of International Law* 153-163.

¹⁷ *Co-ordinated governmental action* means that no organ of any international organization takes part in the preparation and adoption of international regulations. *Inter-governmental action* means that at least one organ of an international organization takes part in the preparation and adoption of international regulations. This may be done either on the international or supranational level.